



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 16-269; FCC 17-75; FR ID 59347]

Procedures for Commission Review of State Opt-Out Request from the FirstNet Radio Access Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) deletes those rules that it previously adopted to implement the “opt-out” provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Act). This is because the Act established the First Responder Network Authority (FirstNet) to oversee the construction and operation of a nationwide public safety broadband network (NPSBN) in the 700 MHz band; gives each state and territory the option to “opt out” of using FirstNet’s deployment; and no state or territory chose to exercise this option within the statutory timeframe.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Order in PS Docket No. 16-269; FCC 19-155, adopted and released on March 6, 2019.

The full text of this document is available for public inspection online at <https://www.fcc.gov/document/opt-out-rules-deletion-order>.

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

CONGRESSIONAL REVIEW ACT

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

FINAL REGULATORY REVIEW CERTIFICATION

Under Section 604(a) of the Regulatory Flexibility Act, the Bureau is not required to prepare a final regulatory flexibility analysis because the Order does not require notice-and-comment rulemaking.

Synopsis

On June 22, 2017, the Commission adopted rules, published at 82 FR 48005, on October 16, 2017., implementing the opt-out review process to be conducted by the Commission, pursuant to certain provisions of the Act. Because no state or territory elected to utilize these opt-out procedures (*i.e.*, 47 CFR 90.532(b)-(f)), there is no continued need for these rules, and the Commission hereby deletes them.

An agency may forego notice and comment rulemaking “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹ We find here that notice and comment

¹ 5 U.S.C. § 553(b)(B); *see Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (stating that notice and comment is “unnecessary” when it involves a “routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public” (internal quotation marks

rulemaking is unnecessary and contrary to the public interest, because no state or territory has elected to opt-out. As the opt-out rules no longer have any practical or legal effect, removing them from the Code of Federal Regulations will avoid potential confusion about their continuing applicability. Such deletion is also inconsequential to the industry and the public and conducting additional processes would be a waste of public resources and otherwise contrary to the public interest.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Private land mobile radio services, Radio.

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Marlene Dortch,
Secretary,
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omitted)); S. Doc. No. 79-248, at 200, 258 (indicating that notice and comment is “contrary to the public interest” when the public lacks interest in a rulemaking).

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90---PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401-1473.

2. Revise § 90.532 to read as follows:

§ 90.532 Licensing of the 758-769 MHz and 788-799 MHz Bands; First Responder Network Authority License and Renewal.

Pursuant to Section 6201 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012), a nationwide license for use of the 758–769 MHz and 788–799 MHz bands shall be issued to the First Responder Network Authority for an initial license term of ten years from the date of the initial issuance of the license. Prior to expiration of the term of such initial license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under the foregoing Act. A renewal license shall be for a term not to exceed ten years.

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